Examiner's Proposed Amendment

Draft

1. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicants, an amendment may be filed as provided by 37 C.F.R. §1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview on XX April 2008 with Mr. Gregory Zayia, Applicants' Representative.

In the Title:

Please change the current title with, Bacteria Counting Method

In the Claims:

The following listing of claims will replace all prior versions, and listings, of claims in the instant application:

Listing of Claims:

1-5. (Canceled)

6. (Currently amended) A method for counting bacteria in a clinical specimen that comprises Gram positive and Gram negative bacteria, the method comprising:

preparing a first assay sample by dividing the clinical specimen into at least two parts and staining a first specimen part using a fluorescent dye, thereby producing a difference in fluorescent intensity between live bacteria and dead bacteria;

preparing a second assay sample by staining all bacteria in a second specimen part using said fluorescent dye and a surface-active agent;

detecting a first optical information from the first assay sample;

detecting a second optical information from the second assay sample;

classifying and counting dead bacteria in the first assay sample based on the first optical information;

classifying and counting [[all]] total bacteria in the second assay sample based on the second optical information; and

calculating [[a]] the number of live bacteria based on a total bacteria count obtained from the second assay sample and [[a]] the dead bacteria count obtained from the first assay sample.

7. (Previously Presented) The method of Claim 6, wherein-the said fluorescent dye comprises a polymethine dye.

8-9. (Canceled)

10. (Original) The method of Claim 6, wherein the surface-active agent comprises a cationic surface-active agent.

11. (Original) The method of Claim 6, wherein the staining is performed at a pH of between about 2.5 and about 4.5.

12. (Original) The method of Claim 6, wherein the first optical information and the second optical information comprise fluorescent light.

13. (Previously Presented) The method of Claim 6, wherein the first optical information comprises fluorescent light and scattered light, and wherein the

second optical information comprises fluorescent light and scattered light.

14-31. (Canceled)

32. (Previously Presented) The method of claim 6, wherein the preparing of the second assay sample comprises damaging a cell membrane of the bacteria with the surface active agent to stain dead and live bacteria with said fluorescent dye.

33. (Previously Presented) The method of claim 6, wherein the first optical information and the second optical information are detected by using a flow cytometer.

34. ((Previously Presented) The method of claim 6, wherein the dead bacteria are stained more strongly than the live bacteria in the preparing of the first assay sample.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571)-272-0925 Monday through Thursday 7:30 A.M. to 6:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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